IN THE

Supreme Court of the United States

OCTOBER TERM 1946

No. [illegible]

FRED Y. OYAMA and KAJIRO OYAMA,
Petitioners,

vs.

STATE OF CALIFORNIA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

BRIEF OF AMERICAN CIVIL LIBERTIES UNION AS *AMICUS CURIAE*

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BRIEF OF AMERICAN CIVIL LIBERTIES UNION, *AMICUS CURIAE*

Interest of American Civil Liberties Union

The American Civil Liberties Union hereby requests this Court to permit it to participate as *amicus curiae* in the instant case. The American Civil Liberties Union holds as one of its prime objectives the elimination of racial discrimination and it believes that the case at bar involves a highly significant instance of such discrimination.

Summary of Case

By a judgment of October 31, 1946, the Supreme Court of California affirmed the grant of a petition by the State

of California for a declaration of the escheat to the State of California of land held by petitioners (R. 121; 65-67). The basis for the escheat was the conclusion that petitioner K. Oyama had owned, possessed and used the land in violation of the Alien Land Law of California[1] (R. 117, 61). Such law prohibits the ownership or use of land by aliens ineligible to citizenship, and provides for escheat in the case of violation of this prohibition. Petitioner K. Oyama is admittedly an alien of Japanese origin and was and is thus ineligible to citizenship under the Federal statute respecting naturalization, both as such statute existed at the time of the purchase and as it exists at the present time. Aside from the individual characteristics required for naturalization, eligibility has been and is based upon ethnic origin. At present, as a result of recent amendments liberalizing the naturalization statute, the only ethnic group whose members reside in this country in a substantial number and are ineligible for naturalization, is the Japanese.[2]

In addition to various arguments of State law, the petitioners argued that the Alien Land Law under which the land escheated was, because of its purpose, effect and application, an unconstitutional racial discrimination

1. Alien Property Initiative Act of 1920, California Stats. 1921, p. lxxxiii, as amended; 1 Deerings' Gen. Laws, Act 261.

2. The ethnic groups to which naturalization was limited prior to amendment of the statute in 1943 were "white persons, persons of African nativity or descent, and descendants of races indigenous to the Western Hemisphere" (Law of Oct. 14, 1940, c. 876, Title I, Subchap. III, §303, 54 Stat. 1140); the statute at present also permits naturalization of "Chinese persons or persons of Chinese descent and persons of races indigenous to India" as well as "descendants of races indigenous to the continents of North or South America or adjacent islands and Filipino persons or persons of Filipino descent". (United States Code, Title 8, Sec. 703). While members of some races indigenous to the Eastern Hemisphere other than the Japanese continue to be excluded from citizenship, there are no substantial number of persons of such other races in the United States. In addition to ineligibility on racial grounds, aliens may of course be ineligible on the basis of their individual conduct; that is, for example, deserters from the army or draft evaders are ineligible (See United States Code, Title 8, Sections 704 to 707).

under the Fourteenth Amendment to the Constitution of the United States.[3] The California Supreme Court, relying on decisions of this Court, rejected this argument and held that the Alien Land Law did not violate the Constitution of the United States. One Justice concurred in the judgment stating: "I concur in the judgment on the ground that the decisions of the United States Supreme Court cited in the main opinion are controlling until such time as they are reexamined and modified by that court" (R. 120).

3. It was assumed by petitioners and it is here assumed by *amicus* that the racial discrimination practiced by the Federal Government with respect to naturalization is constitutional. It is generally so considered on the ground that naturalization is a privilege which the Federal Government has no obligation to confer, but can confer or withhold arbitrarily on racial or any other bases. This rationale does not of course apply to a denial to aliens of the use of land because such use is a right protected by the due process and equal protection clauses of the Fourteenth Amendment. See *Terrace* v. *Thompson*, 263 U. S. 197; *Porterfield* v. *Webb*, 263 U. S. 225, which recognized this principle, but which, we shall maintain, did not correctly apply it.

ARGUMENT IN SUPPORT OF PETITION

The petition should be granted because the Supreme Court of the State of California has erroneously decided an important issue under the Constitution of the United States.

1. This Court's review of the California court's decision upholding the California Alien Land Law is of especial importance because of (A) The current campaign to enforce it against Japanese aliens and American citizens of Japanese descent; (B) The wartime program of discrimination against persons of Japanese ancestry, to which such campaign is an aftermath; (C) The California court's reliance on decisions of this Court which should be overruled; and (D) The United Nations Charter provision respecting racial distinctions.

(A) After a period of a decade or more of disuse of the Alien Land Law,[4] the California Legislature appropriated in 1943 the sum of $200,000 for its enforcement against Japanese aliens and citizens of Japanese ancestry, and sixty or more escheat cases against persons of Japanese descent are pending in the California courts. The current program of enforcement against this ethnic group was initiated as part of the movement to dispossess permanently as many as possible of the Japanese residents who had been evacuated from California in 1942 in the Government's mass evacuation of all persons of Japanese ancestry.[5] The question of whether such evacuation, which was upheld by this Court as an emergency war measure,[6] may be extended into a permanent dispossession

4. See *Wartime Handling of Evacuee Property*, U. S. Department of Interior, War Relocation Authority (U. S. Govt. Printing Office), p. 8.
5. See Report on Japanese Resettlement by Fact-Finding Committee of California State Senate, published May 1, 1945.
6. *Korematsu* v. *United States*, 323 U. S. 214.

is an urgent one since the evacuees have been released from wartime restrictions and are seeking to recover their homes.

(B) The constitutionality of the Alien Land Law is of great current significance from a broader aspect as well. This law was enacted as an anti-Oriental, and primarily as an anti-Japanese, measure. Its purpose was "to reserve the State for American labor and American landlords,"[7] "to keep out people we don't want, particularly the Japanese",[8] and to express "the feelings of the people of the coast towards Orientals".[9] The phrase "ineligible to citizenship" was merely a convenient method of designating the racial group.[10] The law has been enforced by the State of California throughout its history, and it is now being enforced, solely against persons of the Japanese race. And even without considering the facts extrinsic to the terms of the statute showing the impact of the law on the Japanese race, it is to be noted that whether or not the Alien Land Law affects an alien necessarily depends upon his race since eligibility to citizenship so depends.

7. Statement of California delegation to Congress, quoted in Fresno (California) Republican, May 15, 1913.

8. Statement of State Senator Anthony Caminetti, one of sponsors of the law, quoted in Fresno Republican, April 22, 1913.

9. Statement of Governor of California upon signature of Alien Land Law, quoted in Fresno Republican, May 15, 1913.

10. That the law was passed because of opposition to the Japanese entering and settling in California, rather than because of concern with their citizenship status, has at all times been admitted, and in fact asserted, by the sponsors and proponents of the Alien Land Law, and is beyond doubt. See argument of Attorney General for the State of California in *Porterfield* v. *Webb*, 263 U. S. 225, 229; *Estate of Yano*, 188 Cal. 645, 658, 206 Pac. 995, 1001. See also Fourth Interim Report of the Select Committee Investigating National Defense Migration of the House of Representatives, House Report No. 2124, 77th Cong. 2nd Sess., pp. 72-85; McWilliams, Prejudice (1944), 45-66; Konvitz, The Alien and Asiatic in American Law (1946), 158-159. The Japanese succeeded the Chinese as a subject for political capital in California. *Fourth Interim Report*, and McWilliams, loc. cit.; Pajus, The Real Japanese California (1937), 167; Mears, Resident Orientals on the American Pacific Coast (1927), 398; Treat, Japan and the United States (1928), 281.

Because "racism is far too virulent today",[11] because of its disruptive force in a democracy, and particularly because of this Court's countenancing of racial discrimination in the Korematsu and Hirabayashi decisions,[12] this Court's expression of opinion on the Alien Land Law is of great importance. This Court must insure the effectuation of its declaration in those decisions that racial discrimination, never upheld by this Court prior to those cases, is justifiable only on the basis of a grave emergency and is not to be increasingly and generally condoned.

(C) The California Supreme Court's opinion countenancing the racial distinction involved in the Alien Land Law, was based on decisions of this Court. Such decisions, as we shall show below, should be reconsidered and overruled because of their inconsistency with doctrines this Court has developed in the interim since their promulgation. Thus, review of the California decision seems essential to the proper discharge of this Court's functions.

(D) Not only is this Court's review in the instant case important from the standpoint of the development of law in the United States, but it is also important from an international viewpoint. For the United Nations Charter asserts that "the United Nations shall promote * * * universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race * * *".[13] Thus the Court should

11. Justice Murphy concurring in *Steele* v. *Louisville & Nashville R. R. Co.*, 323 U. S. 192, 208-209.

12. *Korematsu* v. *United States*, 323 U. S. 214; *Hirabayashi* v. *United States*, 320 U. S. 81.

13. Article 55c, United Nations Charter, ratified by the United States, August 8, 1945, United States Treaty Series (State Dept., 1946) No. 993. Article 56 states: "All Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55."

review the instant California decision not only to determine whether the United States Constitution has been correctly interpreted, but also to determine whether our treaty obligation has been observed.[14]

The international effect of the assertion in the Charter will depend in part upon the determinations of the courts of the United States on matters of race; for such determinations will serve as examples and precedents in other Nations and before international tribunals with respect to the interpretation and effectuation of the Charter provision.[15] The fact that the ethnic group here involved consists in part of aliens would tend to make the instant proceeding particularly noteworthy internationally.

2. The decision of the Supreme Court of the State of California is erroneous and the decisions of this Court on which it relied should be overruled.

This Court upheld the California Alien Land Law in 1923 in *Porterfield* v. *Webb*, 263 U. S. 225; *Webb* v. *O'Brien*, 263 U. S. 313 and *Frick* v. *Webb*, 263 U. S. 326, all of which in turn relied upon *Terrace* v. *Thompson*, 263 U. S. 197. The law of the State of Washington in issue in the *Terrace* case prohibited land ownership by any alien who had not declared his intention to become a citizen and was not restricted to aliens eligible for citizen-

14. A State law inconsistent with a treaty obligation is invalid. Constitution, Art. 6; *United States* v. *Pink*, 315 U. S. 203; *Missouri* v. *Holland*, 252 U. S. 416.

It is to be noted that the Charter provision has been given effect by the Supreme Court of Ontario in a decision invalidating a covenant prohibiting the sale of property to Jews. *In Matter of Drummond Wren*, Ontario Reports, 1945, p. 778.

15. See *Nielsen* v. *Johnson*, 279 U. S. 47, 52; compare *Paquete Habana*, 175 U. S. 677; *The Antelope*, 10 Wheat. (U. S.) 66; *Great Britain (The Cayuga Indians Claim)* v. *United States*, United States-Great Britain, Claims Arbitration, 1926, Report of Fred K. Nielsen (American Agent), American and British Claims Arbitration, p. 307; see Lauterpacht, Decisions of Municipal Courts as a Source of International Law, 10 (1929), British Year-book of International Law 65.

ship. While this law was, like the California law, anti-Oriental in purpose and effect, since Orientals were the most substantial class of aliens in the State of Washington who were unable under Federal law to declare such intention, the Court, by Mr. Justice Butler, was able to ignore this aspect of the law because of its broad phraseology.[16] Mr. Justice Butler dismissed the question of a violation of the due process clause by stating that it was not violated by a law "applying alike and equally to all aliens" (263 U. S. at p. 218); and as to equal protection he stated:

> "Appellant's contention that the state act discriminates arbitrarily against * * * ineligible aliens because of their race and color is without foundation. All persons of whatever color or race who have not declared their intention in good faith to become citizens are prohibited from so owning agricultural lands" (263 U. S. at p. 200).

When the California Alien Land Law came before the Court, the facts that its prohibition on land ownership or use was directed solely at aliens ineligible for citizenship and that the Attorney General for the State of California made it clear in argument that it was anti-Oriental in purpose were cursorily dismissed.[17] The Court, again by Mr. Justice Butler said in the *Porterfield* case:

> "There (in Terrace *v.* Thompson) the prohibited class was made up of aliens who had not in good

16. This was despite the fact that counsel for the State of Washington argued in support of the law that "in the field of agriculture the American and Oriental cannot compete" and if not for the law the people of the State might "become entirely dependent upon alien races". See Summary of argument, 263 U. S. at 209.

17. The unconstitutionality of the Law in so far as it affects petitioner Fred Oyama, the American citizen son of K. Oyama, is fully developed in the petition for certiorari. We are therefore only here considering the unconstitutionality of the Law from the standpoint of its basic prohibition, regardless of whether alien or citizen is affected thereby.

> faith declared their intention to become citizens. The class necessarily includes all ineligible aliens and in addition thereto all eligible aliens who have failed to so declare. In the case now before us the prohibited class includes ineligible aliens only. In the matter of classification, the States have wide discretion * * * We cannot say that the failure of the California Legislature to extend the prohibited class so as to include eligible aliens who have failed to declare their intention to become citizens of the United States was arbitrary or unreasonable."

Such a superficial and unconsidered approach to a question of racial discrimination is not in accord with the recent decisions of this Court. And in view of this Court's knowledge of the purpose and effect of the California Alien Land Law, its general awareness of the problem of racism, and its specific knowledge and awareness of this problem in relation to the West Coast Japanese, it cannot close its eyes to the fact that the California Alien Land Law in its purpose, effect and application discriminates against persons on a racial basis and particularly against those of the Japanese race. Whether a law discriminates by explicit terms against a racial group or is more subtle in its phraseology is immaterial. See *Lane* v. *Wilson*, 307 U. S. 268; *Hill* v. *Texas*, 316 U. S. 401; *Norris* v. *Alabama*, 294 U. S. 591.

For "all legal restrictions which curtail the civil rights of a single racial group are immediately suspect * * * courts must subject them to the most rigid scrutiny"; and racial discrimination is justified only "under circumstances of direst emergency and peril". *Korematsu* v. *United States*, 323 U. S. 214, 216, 220. See also *Hirabayashi*

v. *United States*, 320 U. S. 81; *United States* v. *Carolene Products Co.*, 304 U. S. 144, 152.

To put the import of this Court's decisions on racial discrimination in terms of presumptions, there is, instead of the usual presumption in favor of statutory validity, a strong presumption against the validity of a racial discrimination and this presumption can only be overcome by a showing of urgent necessity therefor,[18] Thus the Supreme Court of California was in error in relying on the decisions of this Court which were not based on a rigid scrutiny of the necessity for the racial discrimination (R. 114-115) and in deciding that "it is sufficient if a rational basis is found for the classification" contained in the Alien Land Law (R. 117).

The grounds to which the Supreme Court of California adverts as justification for the Alien Land Law are, we submit, far insufficient to justify the racial discrimination involved therein and can not in fact even be deemed to furnish a "rational basis" for it. The California Court relies in part on a previous decision in which it stated that the farming of land by ineligible aliens would cause citizens to be deprived of its use and that "racial distinctions may furnish legitimate grounds for classifications under some conditions of social or governmental necessities" (R. 114). This justification for the discrimination must, it would seem, be rejected out of hand. For the State may not prefer persons of one race to those of another with respect to the use of land, nor is the use of land a privilege which may be arbitrarily granted to citizens as opposed to aliens; even the previous decisions of this Court on the Alien Land

18. Compare the treatment of statutes involving rights "vital to the maintenance of democratic institutions" (*Schneider* v. *Irvington*, 308 U. S. 147, 161), other than the right to racial equality, in the *Schneider* case; *Thornhill* v. *Alabama*, 310 U. S. 88, 95; *West Virginia State Bd. of Education* v. *Barnette*, 319 U. S. 624, 639; and in *Thomas* v. *Collins*, 323 U. S. 516, 527, 529-532.

Law recognized that the use of land is a right protected by the due process clause which can only be affected for the public welfare.

In the other justification relied on by the Supreme Court of California in support of the Alien Land Law, it followed this Court's 1923 decisions with regard thereto: it relied on the connection between the prohibition imposed by the law and the State's interest in the use of land by those upon whose allegiance and interest it could rely. We maintain that this connection would not even justify a law prohibiting land use by all aliens or by all non-declarant aliens, a stronger case than that at bar, where the purpose of the law, its potential effect, and its application were racial. For this speculative reasoning as to the effect of alien land use on the strength of the State, as against the actualities as to the loyalty of aliens[19] and the methods of dealing with alien enemies in war-time, does not disclose a sufficient danger to the State to justify a racial discrimination. But even assuming that the State's interest in land-holding exclusively by citizens or declarant aliens were sufficient to justify a racial discrimination imposed to advance this interest, the California law is nevertheless unconstitutional.

For the California law prohibits land-holding by ineligible aliens while it permits it by other non-declarant aliens. Yet, to argue that the loyalty of an alien ineligible to citizenship is less than that of an alien eligible for citizenship who has not attempted to attain it would be mere sophistry; in fact, the opposite would appear to be true. Thus, even on the basis of the narrow scope assigned to the equal protection clause, and even apart from the special scrutiny required with respect to a law establishing

19. See *Ex parte Kawato*, 317 U. S. 69, 73.

a racial discrimination, the California law must be invalidated. For by prohibiting land use by ineligible aliens and permitting it by other non-declarant aliens, California has struck at a class which is not distinguishable from another on even "a rational basis". Thus it is not attacking an evil which is greater or more urgent than another (*Hirabayashi* v. *United States*, 320 U. S. 81, 101), but arbitrarily singling out one aspect of an alleged evil. In any event, even if the distinction between ineligible aliens and other non-declarants were sufficient to justify a prohibition aimed solely at the former under ordinary equal protection tests, the distinction is insufficient to justify such prohibition where it effects a racial discrimination.

The decision of the Supreme Court of California is erroneous under the Constitution both because the factual showing as to the danger to the State arising from land use by non-citizens is insufficient to justify a racial discrimination and because there is an insufficient factual showing as to the danger arising from the class of non-citizens upon whom the prohibition is imposed as distinguished from other non-citizens.[20]

20. It is to be noted that the standard established as an objective by the United Nations Charter appears to be a more stringent one than that required by the Constitution, in that no discrimination between racial groups, regardless of factual justification, would seem to be condoned by the Charter provision. However, it can be argued that the Charter does not impose the objective of no racial distinction as a rigid standard, since Article 55 merely speaks of the United Nations "promoting" this objective.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be granted.

Respectfully submitted,

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